CATTLE AND CALVES [1]—Continued

State/unit	(1,000 head)	Directors
30. Tennessee	2,450	2
31. Texas	[1] 4,667	15
32. Utah	867	1
33. Virginia	1,713	2
34. Wisconsin	3,883	4
35. Wyoming	1,383	1
36. Northwest		2
Alaska	9	
Hawaii	173	
Washington	1,353	
Total	1,535	
37. Northeast		1
Connecticut	76	
Delaware	30	
Maine	116	
Massachusetts	69	
New Hampshire	49	
New Jersey	67	
Rhode Island	7	
Vermont	292	
Total	706	
38. Mid-Atlantic		1
District of Columbia	0	
Maryland	310	
West Virginia	477	
Total	787	
39. Western		2
Nevada	497	
Oregon	1,420	
Total	1,917	
40. Importer [2]	7,016	7

[1] 1993, 1994, and 1995 average.
[2] 1992, 1993, and 1994 average.

* * * * *

Dated: November 27, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–29459 Filed 12–1–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1654–94]

RIN 1115–AD66

Temporary Alien Workers Seeking H Classification for the Purpose of Obtaining Graduate Medical Education or Training

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: After consideration of comments filed and the relevant issues, the Immigration and Naturalization Service (Service) has decided not to implement one of the changes previously proposed, to preclude the use of the H–1B non-immigrant classification for graduates of foreign medical schools pursuing medical residencies in the United States. However, this rule amends the Service's regulations in other respects by modifying the filing procedures for certain H nonimmigrant petitions involving multiple beneficiaries. The rule allows a petitioner to file a single petition even when the beneficiaries listed on the petition will be applying for nonimmigrant visas at different consulates or for entry into the United States at different Ports-of-Entry, provided that the aliens will be performing the same service or receiving the same training, for the same period of time, and in the same location. This rule further amends the Service's regulations by clearly differentiating between an H–3 alien trainee and an H–3 special education trainee with respect to the time limitations on admission for these types of classifications. This rule will ease the burden on the public when filing H petitions involving multiple beneficiaries and will correct a regulatory inconsistency regarding the limitations on stay for H–3 nonimmigrant aliens.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: On July 14, 1994, at 59 FR 35866–35867, the Immigration and Naturalization Service (Service) published a proposed rule in the Federal Register addressing three issues within the H nonimmigrant classification. The principal proposal related to the treatment of certain foreign medical graduates seeking to be classified under the H–1B nonimmigrant classification as amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA). The Service proposed that graduates of foreign medical schools should be prohibited from seeking H–1B classification for the purpose of pursuing a medical residency in the United States and that, instead, these aliens should be required to avail themselves of the J–1 nonimmigrant classification. The Service also proposed that those aliens already admitted to the United States as H–1B nonimmigrant aliens for the purpose of pursuing a medical residency be required to seek a change of nonimmigrant status to that of a J–1 nonimmigrant alien to complete the residency. After reviewing the comments received from the public, the Service has decided not to promulgate this portion of the proposed rule.

The comment period for the proposed rule ended on September 12, 1994. In response to the proposed rule, the Service received a total of 325 comments. The following is a discussion of the comments and the Service's response.

Multiple Beneficiaries and Time Limitations on Certain H–3 Trainees

Of the 325 comments received, only one addressed the Service's proposal relating to multiple beneficiaries on H petitions and its proposal regarding time limitations for H–3 alien trainees. The commenter opined that these two proposals comported with Congressional intent and recommended that they be adopted. The Service concurs and accordingly will incorporate those two proposals in the final rule.

Medical Residencies Under the H–1B Nonimmigrant Classification

The Service received 325 comments addressing the issue of medical residencies under the H–1B nonimmigrant classification. Only 11 commenters agreed with the Service's proposal that graduates of foreign medical schools be prohibited from using the H–1B nonimmigrant classification for the purpose of pursuing a medical residency. The remainder of the commenters expressed the opinion that Congress intended that graduates of foreign medical schools be permitted to pursue medical residencies under the H–1B nonimmigrant classification. In addition, 235 of the commenters stated that it was not fair or appropriate for the Service to require that an alien already admitted into the United States as an H–1B nonimmigrant alien in order to pursue a medical residency be required to change his or her nonimmigrant status to a J–1 nonimmigrant alien in order to complete the residency.

In proposing this rule, the Service expressed its opinion that Congress did not intend the H–1B nonimmigrant classification to be used by graduates of foreign medical schools coming to the United States to pursue medical residencies or otherwise receive graduate medical education or training, and that, therefore, these aliens should

seek classification as J–1 nonimmigrant aliens. This opinion was based on the Service's examination of the relevant legislation, including the Health Professionals Education Assistance Act of 1976 (HPEAA), Pub. L. 94–484 and MTINA. The Service took note that the HPEAA established the J–1 classification as the sole vehicle, with certain limited exceptions, for graduates of medical schools to obtain graduate medical education or training in the United States, including medical residencies. *See* sections 101(a)(15)(J) and 212(j)(1) of the Act; *see also* pre-IMMACT (Immigration and Nationality Act of 1990) section 101(a)(15)(H)(i) of the Act. The Service further noted that, by amending sections 101(a)(15)(H)(i)(b) and 212(j)(2) of the Act, MTINA provided an avenue for foreign medical graduates to enter the United States in H–1B status to perform services in the medical professions. The Service opined, however, that MTINA did not alter the HPEAA's requirement, as set forth in section 212(j)(1) of the Act, that a graduate of a foreign medical school seeking education or training do so only as a J–1 nonimmigrant alien. In support of this position, the Service expressed its belief that Congress would not have placed in juxtaposition two such clearly different statutory provisions as section 212(j)(1) and section 212(j)(2) of the Act had it intended for the H–1B and J–1 classifications to overlap with respect to foreign medical graduates seeking graduate medical education or training.

After a careful review of the comments received in response to the proposed rule and a further review of the relevant legislative history, the Service has opted to withdraw this portion of the proposed rule. The Service is now of the opinion that the statute can be reasonably interpreted either to provide that as proposed by the Service, the H–1B classification is not available for graduates of foreign medical schools to take medical residencies or, as is the current practice, the H–1B classification is available for graduates of foreign medical schools for medical residencies.

The Service has elected to adopt the second interpretation and continue its current practice of allowing graduates of foreign medical schools to take residencies under the H–1B classification. In so doing, the Service notes first that nothing in the statute or the relevant legislative history specifically precludes H–1B classification for aliens seeking graduate medical training, and second, under the language of section 214(i) of the Act, a graduate medical education program, such as a residency, could in some cases meet the definition of ''specialty occupation'' for H–1B purposes. *See also* 8 CFR 214.2(h)(4)(i). In addition, we note, as did some commenters, that a medical residency can reasonably be considered to be either a training program or a specialty occupation. This position is consistent with that taken by the Service in *Matter of Bronx Municipal Hospital Center,* 12 I&N Dec. 768 (1968), where the Regional Commissioner held that a medical residency is primarily clinical in nature and, therefore, does not qualify as an H–3 training program.

In deciding to withdraw this portion of the rule, the Service also found persuasive the comments submitted by a number of large urban medical facilities indicating that they would be unable to recruit qualified individuals to pursue residencies under the J–1 program. These commenters indicated that they have relied heavily on the use of the H–1B program to staff their residency programs and that the requirement that these aliens use the J–1 program would result in a curtailment of medical services which could otherwise be provided to the surrounding community.

Finally, the Service was also impressed by the sheer number of comments received in opposition to the rule. While three major organizations involved in the medical health field supported the Service's proposed rule, over 300 other commenters expressed the opinion that graduates of foreign medical schools should be permitted to pursue medical residencies as H–1B nonimmigrant aliens. The three commenters based their opinion on the belief that medical residencies should be characterized as training programs as opposed to temporary employment as a specialty occupation. However, as indicated above, the Service is of the opinion that a medical residency can be considered either a training program or a specialty occupation. *See Bronx Municipal Hospital Center, supra.*

As a result of the Service's withdrawal of this portion of the proposed rule, graduates of foreign medical schools will continue to be permitted to pursue a medical residency under the H–1B classification provided, of course, that all regulatory and statutory requirements for the classification are met. In addition, graduates of foreign medical schools will also continue to be eligible to pursue medical residencies under the J–1 nonimmigrant classification.

Prospective petitioners for H–1B nonimmigrant aliens seeking to pursue medical residencies should be aware of the obligations which are assumed when an H–1B petition is filed. These obligations include both the requirement that the prospective employer pay the alien's return transportation if the alien is dismissed before the expiration of the validity of the petition and compliance with section 212(n) of the Act.

This rule will have no adverse effect on family well-being.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This regulation merely modifies certain filing procedures for H petitions.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraph (h)(2)(ii); and by

b. Revising paragraph (h)(13)(iv), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H–2A, H–2B, or H–3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time, and in the same location.

* * * * *

(13) * * *

(iv) *H–2B and H–3 limitation on admission.* An H–2B alien who has spent 3 years in the United States under section 101(a)(15)(H) and/or (L) of the Act; an H–3 alien participant in a special education program who has spent 18 months in the United States under section 101(a)(15)(H) and/or (L) of the Act; and an H–3 alien trainee who has spent 24 months in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.

* * * * *

Dated: November 1, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–29417 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–10–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Regulation of Products Subject to Other Acts Under the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; revocation of rules.

SUMMARY: The Commission revokes seven rules transferring regulation of risks of injury from the Federal Hazardous Substances Act to the Consumer Product Safety Act. The Commission is revoking these rules because they are no longer needed.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, extension 2216.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) established the Consumer Product Safety Commission (the Commission) to protect the public from unreasonable risks of injury associated with consumer products. Section 3(a)(1) of the CPSA (15 U.S.C. 2052(a)(1)) defines the term ''consumer product'' to mean an article which is produced or distributed for sale to, or use by, consumers.

Section 30(a) of the CPSA (15 U.S.C. 2079(a)) transferred to the Commission the authority formerly exercised by the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 30(d) of the CPSA requires the Commission to regulate under the FHSA any risk of injury associated with a ''consumer product'' which can be eliminated or reduced to a sufficient extent by action under the FHSA, unless the Commission issues a rule to transfer regulation of that risk of injury to the CPSA.

B. Regulation of Toys and Children's Articles

Toys and other articles intended for use by children are ''consumer products,'' as that term is defined by section 3(a)(1) of the CPSA, because they are articles which are produced for sale to consumers. Sections 2(f) and 3 (e) of the FHSA (15 U.S.C. 1261(f), 1262(e)) authorize the Commission to issue rules to ban any ''toy or other article intended for use by children'' which presents a ''mechanical hazard.'' The procedural steps required to issue a banning rule are set forth in sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e)–(i)).

C. Corrective Action Under the FHSA

Before 1984, the Commission's authority to order corrective action for toys and children's articles under section 15 of the FHSA (15 U.S.C. 1264) was limited to those items which violated an applicable banning rule.

Between 1981 and 1984, the Commission received reports of deaths and injuries associated with several types of toys and children's articles. These products included:

- Stuffed toys suspended from cords or strings which presented a risk of strangulation death or injury.
- Squeeze toys which presented a risk of suffocation death or injury.
- Mesh-sided playpens and mesh-sided portable cribs which presented a risk of asphyxia to children from airway blockage or chest compression.
- Expandable enclosures made from criss-crossed slats which presented a strangulation hazard to children.
- Baby cribs with hardware failures or omissions which presented risks of death or injury to children.
- Baby bassinets with legs that collapsed and presented risks of death or injury to infants.

All of these products were ''toys or other articles intended for use by children'' which presented a ''mechanical hazard.'' However, none of these products was subject to a banning rule issued under provisions of the FHSA. The Commission estimated that issuance of a banning rule would take about two years for each product.

D. Corrective Action Under the CPSA

Then as now, provisions of section 15 of the CPSA (15 U.S.C. 2064) authorized the Commission to issue a corrective action order for any consumer product which contains a defect which creates a ''substantial risk of injury to the public'' whether or not the product is in violation of a consumer product safety rule or other regulation.

E. Issuance of Transfer Rules

After considering the risks of injury to children presented by the products described above and the provisions of the FHSA and the CPSA, the Commission decided to transfer regulation of those risks from the FHSA to the CPSA. Although the risks of injury might ultimately be eliminated or reduced to a sufficient extent by action under the FHSA, issuance of rules to ban the products under consideration would be required before the Commission could issue a corrective action under the FHSA. The Commission concluded that transfer of regulation of the risks of injury from the FHSA to the CPSA was necessary because corrective action, if appropriate, could be accomplished more efficiently and expeditiously under the CPSA than under the FHSA.

From 1982 through 1984, the Commission issued seven rules under provisions of section 30(d) of the CPSA to transfer regulation of risks of injury associated with toys and children's articles from the FHSA to the CPSA. Those rules are codified in title 16 of the Code of Federal Regulations as:

§ 1145.9 Certain stuffed toys; risk of strangulation injury (issued March 31, 1982, 47 FR 13516).

§ 1145.10 Certain squeeze toys; risk of strangulation injury and/or suffocation injury from lodging in the throat (issued March 15, 1984, 49 FR 9722).